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HAROLD B. WILLEY

IN THE

Supreme Court of the United States

October Term, 1954

No. 489

DR. CARROLL K. DAVIS,

Appellant,

v.

BOARD OF REGENTS OF THE UNIVERSITY OF THE STATE OF NEW YORK,

Appellee.

MOTION TO DISMISS OR AFFIRM AND BRIEF IN SUPPORT THEREOF

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The undersigned, on behalf of the Appellee, hereby acknowledges receipt of the Statement of Jurisdiction filed herein, and moves that the appeal be dismissed or the judgment below affirmed, or, if the Appellant's papers are to be considered as an application for certiorari, that such application be denied.

In support of such motion, the undersigned asserts the following reasons:

This litigation was commenced by a Petition verified August 21, 1953, which appears in the record. The only suggestion that any constitutional issue was presented or

might be presented was paragraph 8 of the Petition, as follows:

> "Your petitioner has been advised and verily believes that the proceedings instituted against him were so conducted as to deprive him of his right to due process under the law, denied him substantial rights thereunder, were so prejudicially conducted as to render the proceedings wholly contrary to the law and to render same null and void." (R. 18)

Thereafter the Petition alleged some "legal errors", but it nowhere contained reference to constitutional grievances except as quoted, which is not a specific reference either as to facts or as to what constitution is invoked.

The unreported opinion by Mr. Justice Hamm (R. 5-12) makes no reference to any constitutional question. Neither does the opinion of the Appellate Division (R. 70-76, officially reported at 283 App. Div. 591). Neither does the memorandum of affirmance by the Court of Appeals (officially reported at 307 N. Y. 786 mem.).

Subsequently, the Court of Appeals declined to amend its remittitur. *Matter of Davis* v. *Regents*, 307 N. Y. 833 mem. The show-cause order then before the Court of Appeals showed that the application was for:

> "Amending the remittitur in the above entitled action to state the grounds of the decision of this Court in order to remove uncertainty, avoid litigation and make it appear to the Supreme Court of the United States upon application for a writ of certiorari whether or not a Federal question was necessarily decided * * *."

The decisions of the State courts are final against the Appellant as to any alleged "legal errors", including violations of the due process and equal protection provisions of the State Constitution, if indeed any such questions were ever deemed to be involved.

As to the possible involvement of any Federal question or any question about violation of the Constitution of the United States, it is respectfully submitted that no such question ever was presented and that no substantial question of that nature is now suggested on behalf of the Appellant.

Albany, January 1, 1955.

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